others, the continuation of restrictions on a network's providing repping services to its affiliates simply cannot be reconciled with the Commission's repeal of its Golden West policy.

In sum, the concern that a rep owned by a network company may artificially inflate the selling prices of its affiliate clients to protect network prices has no logical basis.

III

REPEAL OF THE REPPING RULE WOULD NOT RESULT IN A REDUCTION IN DIVERSITY IN ANY INTELLECTUAL MARKET

In declining to repeal the repping rule in 1990, the Commission stated, inter alia, that the rule "protects broadcast affiliates from the networks exerting influence over affiliate programming decisions."[43] In its brief Report and Order, the Commission offered no analysis and cited no evidence to support its implied premise that the public interest might somehow be harmed if a network company did provide the kind of advice concerning its affiliates' choice of non-network programming as is typically offered by a sales representative to a station client.[44] Rather, this view was apparently based on the hoary assumption that diversity interests are served by any rules that would restrict a station from receiving, if it wishes, additional network or "network-influenced" programming. That assumption is fundamentally flawed, since it fails to recognize that networks themselves acquire their programming from widely diverse sources. Indeed, the Commission has unambiguously recognized in other contexts that, even as to the

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[43] Report and Order in BC Docket No.78-309, 5 FCC Rcd 7280, 7281 (1990).

[44] Id.

programming included in a network's schedule, the only useful measure of source diversity is copyright ownership.[45] Certainly this principle applies with no less force to programming which a network has merely had a voice in selecting.

In any case, while reps occasionally offer their client stations advice in selecting syndicated programming, actual programming decisions are made by the stations themselves based on information from a wide variety of sources. Generally, station programming personnel are far more familiar than their reps with the unique characteristics of their individual local markets and are in the best position to predict how a particular program will perform on their own station. Station personnel have extensive ratings data and other information readily available to them for projecting program performance -- much of it provided through trade press by syndicators themselves. Moreover, virtually all major market stations, and many smaller market stations, have access to the sophisticated research capabilities of well-funded group owners. A rep is thus merely one voice, if that, in the program selection process of the represented station.

A network-owned rep would have no reason to recommend to its client stations anything but the programming most likely to maximize the station's audience. It is this programming that will generate the greatest return for both the station and the rep, the latter of which shares

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[45] Second Report and Order in MM Docket No. 90-162, 8 FCC Rcd 3282, 3310-11, recon. granted on other grounds, 8 FCC Rcd 8270 (1993) ("Financial Interest and Syndication Rules"). In so recognizing, the Commission noted that "focusing on the legal owner of the program is consistent with the Commission's historic approach to diversity in other contexts." Id. at 3310, n. 66. See also, Report and Order in MM Docket No. 94-123, FCC 95-314 (released July 31, 1995) at ¶ 52 ("Review of the Prime Time Access Rule").

directly through its commissions in the station's success or failure. Moreover, there is a perfect correspondence between what a rep, as program advisor, should be trying to help its clients attain and what every network wants for its affiliates -- the largest possible audiences from sign on to sign off.

To the extent that a network company may have a stake in programming choices made by a client affiliate -- as where, for example the network owns or syndicates a particular program[46] -- the client station is quite capable of taking that interest into account in weighing the advice of its network-owned rep. Indeed, stations are accustomed to evaluating a rep's programming advice in light of theoretical conflicts of interest that may arise from other activities of the rep's parent firm. For example, two of the most important reps, Blair and Telerep, have had active roles in program production and syndication through their wholly-owned subsidiaries, Blair Entertainment and Television Program Enterprises. No one has ever suggested -- nor would it make sense to suggest -- that these programming activities should disqualify these companies from offering repping services or bar stations from accepting them.

Of course, to the extent that a station values the role of its rep as programming advisor, that station will always have the option of dismissing a rep, network-owned or otherwise, if that rep has performed poorly in this area. Indeed, it may choose in the first instance not to be represented by a network-owned rep at all if it suspects that that rep's programming advice will be unreliable.

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[46] While network companies are currently precluded from directly syndicating television programs domestically, they will be permitted to do so with the scheduled elimination of the Commission's remaining financial interest/syndication rules in November 1995. Financial Interest and Syndication Rules, supra, 8 FCC Rcd 3282

In short, whether network-owned reps are capable of providing unbiased, best-faith programming advice is a question that can and should be entrusted to the marketplace. If network-owned reps prove incapable of protecting their clients interests in this or any other respect, they will most assuredly fail to win clients.[47]

IV.

ELIMINATION OF THE REPPING RULE WOULD BENEFIT THE PUBLIC BY INCREASING COMPETITION AND EFFICIENCY WITHIN THE REPPING INDUSTRY.

The years since the repping rule's adoption have witnessed significant consolidation in the repping business. Indeed, the extent of consolidation has been such that in the 1990's, for the first time, a significant number of television stations are represented by firms that also, through their parent firms, represent directly competing television stations -- stations serving the same local market. This has been the case, for example, with many of the client stations of Seltel, one of what appear to be only eight major repping firms still in existence, which was purchased in

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[47] In repealing its Golden West policy, the Commission expressly found that such programming advice as was provided by sales representatives posed no threat to program diversity. Golden West Policy Repeal, supra, 87 FCC 2d at 680. As the Commission noted:

> "With regard to the issue of influence over programming, we do not find a problem of such magnitude that Golden West should remain as a policy. Even those commenters that argue for retention of the policy point out that programming advice is not forced upon the station. Rather, the station typically solicits the advice of the station rep firm."

Id. at 680-81.

1992 by its competitor Katz.[48] Similarly, two major reps came under common ownership when Harrington, Righter & Parsons (HRP) was purchased by Cox Broadcasting, parent of Telerep, in 1994.[49] While some station licensees have expressed discomfort with these arrangements,[50] the reduction in the number of major repping firms has left these stations with few alternatives in the marketplace.

If network companies are permitted to offer repping services to their affiliates, these stations will each gain one more firm seeking to represent them -- an increase in choice that may be quite significant where, as a practical matter, alternatives are few. Moreover, it is notable that network companies have shown no interest in repping stations other than their affiliates and have never availed themselves of their right, under the Commission's rules, to do so. Accordingly, a network company may be relied upon to pursue only one station in each market -- its affiliate. Therefore, unlike those reps which, through their parent firms represent competing stations within the same market, the entry of a network rep into a market can move concentration levels in local advertising markets in only one direction -- downward.

We believe that network companies have demonstrated their ability to operate efficiently in the repping industry -- an ability rooted in a national advertising expertise central to the networking business. Indeed, in its 1980 Network Inquiry Report, the Commission's staff observed that national spot advertising prices in those local markets in which network companies

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[48] "TV Ad Rep Buyout Would Fatten Katz," Variety, January 13, 1992, p. 1.

[49] "Cox Buys HRP Rep Firm," Variety, September 12, 1994, p.72.

[50] "TV Ad Rep Buyout Would Fatten Katz," Variety, January 13, 1992, pp. 1, 90.

own television stations were lower than prices in comparable markets.[51] The staff opined that this price differential might well have been attributable to a greater level of efficiency achieved by the in-house reps of the "owned and operated" station groups of the three original networks compared to other reps -- an efficiency ultimately passed on in these highly competitive local markets to national advertisers.[52]

There is every indication, we submit, that if the repping rule is repealed, the result will be to increase the competitiveness and efficiency of the repping industry, to the benefit of advertisers, affiliates and the general public.

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[51] Network Inquiry Report, Vol. I at 492-494.

[52] Id. at 494.

CONCLUSION

For the foregoing reasons, CBS respectfully urges the Commission to repeal the repping rule in its entirety.

Respectfully submitted,
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